May 15, 2006

From: Cheryl Morgan

To: DOE, Water Quality Program
P.O. Box 47696
Olympia, WA. 98504

Attn: Karen Dinicola

Re: Public Comment on Formal Draft Phase II
Municipal Stormwater Permit for Eastern Washington

Dear: Washington State Department of Ecology's Water Quality Enforcement Personnel:

I have lived my entire life of 63 years in the Pullman area. I have lived adjacent to the South Fork of the Palouse River for 58 years. My home and property is located within the lower reaches of The Hatley Creek Basin which is just down gradient of the Pullman City Limits. Hatley Basin encompasses approximately 760 acres. Wawawai Creek and Hatley Creek are [unnavigable] natural streams located within the Basin. The entire basin drains to a 6.8 acre outlet basin, this is where my home and property is located. Hatley Creek is a direct tributary to the SFPR. The SFPR has been consistently listed on the DOE's 303(d) state list for impaired waters for several years.

The upper reaches of the basin are within the City of Pullman's jurisdiction and are developing at a rapid pace. The lower reaches of the Basin are located within Whitman County jurisdiction. The impervious surfaces are promoting significant flows of urban stormwater [sewer] runoff within the upper reaches of the Basin, thus creating negative impacts to Wawawai Creek, Hatley Creek and the SFPR. Off-site urban stormwater [sewer] flows to these natural streams are presenting significant concerns for both water quality and water quantity.

Wawawai Creek and Hatley Creek were historically fed by natural runoff and natural springs. These natural streams and private properties located within the lower reaches of the Basin are rapidly being completely transformed into nothing more than open urban stormwater sewer systems, thus posing a significant threat to the general health and welfare of all residents living within the lower reaches of the basin.

The continued significant degradation of the natural stream (Hatley Creek) located on my property as well as all natural waterways located within the City of Pullman prompted my involvement with local watershed-planning. In Jan. 1998, The Palouse Conservation District (PCD) initiated a local watershed-planning group for the SFPR. I became involved with both of the SFPR and the North Fork of the Palouse River (NFPR) watershed-planning groups and have continued my involvement as an active planning unit member for the ongoing WRIA 34 process.

I can truthfully say over the past eight years I have spent over 10,000 hours of my own time (I am not paid as agency personnel and local staff members and consultants are to attend these watershed meetings) researching the significant negative impacts to natural waterways created by off-site urban stormwater [sewer] runoff.

My extended research has provided me with volumes of enforceable Federal and State Laws mandating the protection of our natural waterways from the negative impacts of urban stormwater runoff. These "age old" laws simply have been and continue to be ignored by our local and state governments along with many of the professional engineers, thus placing a high risk to the public health and safety to all people of Washington State.

********The following are a select few of State and Federal mandates that are relevant to the attached comment letter by Larry and Cheryl Morgan.**

……

DOE has confirmed that:

1. **Urban stormwater runoff is the leading contributor to water quality pollution in urban waterways.** (DOE must acknowledge that off-site urban stormwater **[sewer]** runoff is also degrading many rural natural streams and private properties)
2. **Urban stormwater runoff is Washington's fastest growing water quality problem.**
3. **Untreated urban stromwater is not safe and posses a significant threat to public safety and welfare.**

……

The Federal Clean Water Act:

The Federal Clean Water Act adopted in 1972 is a Public Welfare Law to protect all people from the dangers of water pollution.

Federal laws require regulation and control of stormwater discharges. Pursuant to the CWA discharges of pollutants into waters of the United States can be allowed only by specific permits.

The Third Rule of the CWA is that "waste transport" is not an acceptable Designated Use, because in passing the 1972 CWA, Congress said that "our nation's surface waters should no longer be used as waste conveyance or treatment systems".

Key Elements for Water Quality Standards for Surface Water as per the CWA:

a. **Designated Uses**
b. **Water Quality Criteria (conditions supporting DU's)**
   (WQC are descriptions of the conditions in a water body necessary to support the DU's)
c. **Antidegradation**

Selected definitions as per the CWA:

Pollution: the man made or man induced alteration of the chemical, physical, biological and radiological integrity of water.

Treatment Works: any devices, and systems used in the storage, treatment, ……
It also means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, **which includes stormwater runoff**, or industrial waste, which includes waste in combined stormwater and sanitary systems. (infiltration and inflows of stormwater into the City of Pullman's WWTP are significant)

Code of Federal Regulations (CFR) Authorized Under Section 402(p) of the CWA for control of stormwater discharges.

(40 CFR) Fact Sheet required by 124.56 sets forth the basis:

(2) for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutants of concern which are sufficient to attain and maintain applicable water quality standards.

(3) the permit **requires all effluent and ambient monitoring** necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(4) the permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator no longer attain & maintain applicable water quality standards.

Washington Water Law confirms:

1. Washington has declared, both in its Constitution and in statute, that water is a public resource held in trust for the people.
2. The state (DOE) regulates water as a public resource and as an outgrowth of the state's "police power" to protect the general health and welfare.
3. In interpreting the state laws, the Court held that the riparian and littoral proprietors respectfully **own the beds of** [unnavigable streams] and lakes.
4. While a person may obtain a right to the use of water in the state, this right does not vest that person with an ownership interest in the water itself, but only authorizes a [usufruct] (the legal right of using and enjoying), which is a right to only the use of the water.
5. The rule of the common law mandates that riparian land owners are to be protected in the use and enjoyment of the water **naturally** flowing by and over his land.
6. The Water Resources Act of 1971 sets forth protection and enhancement of "state waters", securing of the maximum net benefits arising from both diversionary uses of the state's public waters and the retention of waters within streams and lakes in sufficient quantity and quality to protect instream and natural values and rights.
7. **Beneficial Use Criteria:** The Water Resources Act of 1971 defines beneficial uses for "state waters" to be **protected** for domestic, stock watering …….fish and

wildlife maintenance and enhancement, recreational,….and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial.

8. **Water Quality Considerations:** The Water Resources Act of 1971 established a state water resource policy that emphasized the importance and connection between water quality and quantity to protect natural values. It requires that quality of the natural environment **"shall be protected".**
9. The Water Resources Act of 1971 mandates that the "waters of the state" shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of **treatment** [prior to entry]…

Chapter 90.48 RCW, Water Pollution Control, and WAC201A, Water Quality Standards for Surface Waters of the State of Washington:

These Laws clearly state that "any discharge of sediment-laden runoff or other pollutants to waters of the state is a violation and subject to enforcement".

Chapter 90.48.010 RCW:

Clearly states "……It is declared to be the public policy of the State of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health & public enjoyment.

Title 18 RCW------Chapter 18.43 Engineers and Land Surveyors:

18.43.010 General provision is to safeguard life, health, and property, and to promote the public welfare.

Chapter 43.21C RCW State Environmental Policy Act (SEPA) Revised 1997:

"SEPA may be the most powerful legal tool for protecting the environment of the state".

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

RCW 90.48.910 specifically provides that the statute is to provide "additional and cumulative remedies" to prevent water pollution.

The failure of local and state governments to consider "cumulative impacts" from many activities is relevant in determining liability.

Livestock Watering Rights:

RCW 90.22 provides for flows of "state waters" to protect "water quality". Likewise, as per RCW 90.22.040, the courts have recognized the historic right of livestock watering use upon riparian grazing lands and access to the natural streams and rivers on adjoining lands now or in the foreseeable future.